

Trusts & Estates

Fall Semester 2021

Tues/Thurs 10:50-12:20

Room 201

Professor Andrew Gilden

E-Mail: agilden@willamette.edu

Office Hours: Weds 10:30-12:30 via Zoom (link on WISE) or email for appointment

Learning Outcomes

Students will learn the foundational principles of succession laws and gain the necessary analytical and doctrinal skills to pursue advanced coursework in estate planning.

Students will examine the following topics in-depth: intestacy laws; executing, amending, and contesting a will; trust creation; and fiduciary duties. Students will apply the principles of testamentary freedom to a broad range of complex factual circumstances that can emerge surrounding the death of a property owner and assess how to balance testamentary freedom against other important policy interests, like free alienability of property and caring for living dependents. In order to receive credit for this course, the ABA expects that you will be conducting at least 2 hours of out-of-class work for every hour you are meeting with your instructor.

Required Texts

- Dukeminier & Sitkoff, *Wills, Trusts, and Estates* (9th Ed.). For Classes 2-5, some of the reading assignments will be from the document “New Intestacy Chapter.pdf,” available on WISE
- Other readings will be posted on WISE

Class Readings

1. Tu 8/24	<p>Freedom of Disposition 1-18</p> <ul style="list-style-type: none"> • http://www.newnownext.com/transgender-lawsuit-rachel-fish-inheritance/07/2017/ • https://www.eonline.com/news/901592/hugh-hefner-s-trust-details-revealed-no-drugs-or-alcohol-abuse-allowed • https://www.caring.com/caregivers/estate-planning/wills-survey/
Intestacy	
2. Th 8/26	<p>Introduction to Probate and Intestacy; Surviving Spouses Casebook: 41-50 New Intestacy Chapter: 1-19 Casebook: 75-80</p>
3. Tu 8/31	<p>Descendants' Shares; New Intestacy Chapter: 23-38</p> <p>https://www.usatoday.com/story/life/2019/04/18/prince-died-3-years-ago-his-estate-still-unsettled-heres-why/3344038002/</p>
4. Th 9/2	<p>Intestacy: Who is a Child? New Intestacy Chapter: 38-44, 56-67 <i>In re Estate of Prince Rogers Nelson</i> (on WISE)</p>
5. Tu 9/7	<p>Advancements; Bars to Succession New Intestacy Chapter: 84-87 Casebook: 132-145 ORS §§ 112.455, 112.465</p>
Wills	
6. Th 9/9 VIA ZOOM	<p>Introduction to Wills; Formalities & Holographic Wills 147-150, 153-171; 197-209 http://www.nytimes.com/2016/10/24/nyregion/a-brownstone-and-the-bitter-fight-to-inherit-it.html? r=0</p>
7. Tu 9/14 VIA ZOOM	<p>Holographs (cont'd) & Curative Doctrines 209-215, 184-195 <i>Litevich v. Superior Court</i> (on WISE) <i>In re Estate of Horton</i> (on WISE) Uniform Electronic Wills Act, pp. 1-11 (on WISE) https://www.yahoo.com/news/unsent-text-message-passes-australia-050804384.html</p>
8. Th 9/16	<p>Revocation of a Will 215-241 Uniform Electronic Wills Act, pp. 13-15 (on WISE)</p>

9. Tu 9/21	Components of a Will 241-263
10. Th 9/23	Capacity 265-283 <i>Dougherty v. Rubenstein</i> (on WISE)
11. Tu 9/28	Undue Influence 283-307
Th 9/30	NO CLASS
12. Tu 10/5	Fraud and Duress 313-326
13. Th 10/7	Will Construction 327-350
14. Tu 10/12	Lapsed Devises 351-384 (skim 368-371 and <i>Ruotolo v. Tietjen</i>)
15. Th 10/14	Review Class Practice Problems Posted to Wise
Trusts	
16. Tu 10/19	Introduction to Trusts; Creation 385-386, 391-396, 400-413
17. Th 10/21	Trust Creation cont'd; Trust Property; Beneficiaries 413-434
18. F 10/22 10:50- 12:20 VIA ZOOM	Fiduciary Duty: Duties of Loyalty and Prudence 579-580, 583-586, 588-594 (skip Rothko case), 602-608
19. Tu 10/26	More Prudence, and Duty of Impartiality 621-622, 626-635, 637-642, 646-649 (skim), 657-663, 667-668
20. Th 10/28	Charitable Trusts 743-760, 766-769 778-784 <i>Register of Wills for Baltimore City</i> (on WISE)
21. Tu 11/2	Trust Alienation, Modification, and Termination 688-703, 717-737 (skim Riddell case)
22. Th 11/4	Limits on Freedom of Disposition—Protection for Spouses and Children 511-517, 566-577; https://www.investmentnews.com/article/20180709/FREE/180709938#
23. Tu 11/9	Limits on Freedom of Disposition? Rule Against Perpetuities 880-901 http://www.nytimes.com/2016/08/09/business/states-vie-to-protect-the-wealth-of-the-1-percent.html
24. Th 11/11	Contemporary Estate Planning & Preparing for Incapacity Guest Speaker: Jennifer Trundy, Readings TBA

25. Tu 11/16	Digital Assets https://www.nytimes.com/2019/06/10/opinion/hacking-phone-privacy.html <i>Ajeminian v. Yahoo!</i> (on WISE) <i>Matter of Coleman</i> (on WISE) https://estateplanning.osbar.org/files/2016/12/Est_2016Dec.pdf (pages 1-12)
26. Th 11/18	REVIEW CLASS

Class Policies and Procedures

Attendance and Participation

Class attendance and participation are mandatory. Although this is a survey course, it is designed to be interactive, both with me and with your fellow classmates. For each class (starting Class 2), a rotating panel of 10-12 students will be “on call” and should be ready to discuss the details of the assigned materials. If you are not officially on call for a particular class, you are nonetheless encouraged to ask questions and share your perspective on the assignments. Exceptional class participation may factor into your final grade. Due to the large class size this semester, please do not email me regarding future absences unless exceptional circumstances require that you be reassigned to a different panel.

For classes that are held via Zoom: As a baseline, I will count you as attending only if you have signed into the proper zoom link for the course on time, and your video is on. I will use Zoom’s tools to determine who is present in the course. Note that while you can change your screen name in Zoom, I’d ask that you use your preferred first and last names for this in order to help me know who’s who. I know that there will be occasional times when you will need to turn off your video if something is going on in the background, but please don’t worry about children, pets, roommates or significant others entering the frame. They are welcome to attend! If you are having difficulty with your webcam and need to briefly turn off your video, please ensure that you have a profile photo that can be displayed to the rest of the class. Instructions on doing so are available here: <https://www.guidingtech.com/show-profile-picture-instead-video-zoom-meeting/>. During class, please use the hand raise function in Zoom to indicate that you would like to speak. I will, at least initially, keep the chatroom functions turned on to facilitate additional interactivity, but please use the hand raise function to direct any questions or comments to me.

Willamette Law is committed to making sure that everyone is able to participate fully in our courses. If you have particular needs for access to this course that you need in order to do that, please contact Dean Mac Alpine or Sue Minder, Director of Accessible Education Services, at sminder@willamette.edu or 503-370-6737.

Grading/Final Exam

Your grade is based upon a 3-hour, open-book examination and may also include a one-step adjustment upward or downward based upon your class participation.

Reading Assignments

Except where otherwise noted, all pages listed above refer to our textbook, Dukeminier & Sitkoff, Wills, Trusts and Estates (9th Edition). There is no need to purchase a statutory supplement, but we will regularly refer to Title 12 of Oregon Revised Statutes (<http://www.oregonlaws.org/ors/volume/3>).

WISE/E-mail

Please check WISE and your e-mail on a regular basis. I will make most class announcements over e-mail, which is also the best way to reach me with any concerns or questions.

I encourage you to contact me to discuss any topic of concern, whether about trusts & estates, another course, your professional ambitions, or balancing academic and professional commitments with your personal life. I look forward to working with you this semester—AG